

### **Remarks and Arguments**

Claims 1-25 are pending. Claim 1 has been amended to particularly point out the invention. Support for this amendment is found in the specification on page 7, line 10-page 8, line 12. New claims 26-28 have been added to particularly point out the invention. Support for new claims 26-28 can be found in the specification on page 10, line 11-page 11, line 4. Claim 3 has been canceled. No new matter has been added by these amendments.

### **Specification**

The Office objected to the specification because a word was missing from page 9, line 17. The typographical error has been corrected.

### **Double Patenting**

Claims 1, 3, and 10-15 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 66 and 76 of copending Application No. 10/034432 (hereinafter '432). Applicants have amended claim 1 herein. Applicants submit that claims 66 and 76 of the '432 application does not teach or suggest administering a treatment composition comprising a photodynamic agent suitable for photodynamic therapy, wherein the photodynamic agent is chosen from a hematoporphyrin, an aminolevulinic acid, a porphyrin, a mercocyanine, a porphycene, perfimer sodium, a verteporfin, Photofrin II™, PH-10™, a chlorin, a zinc phthalocyanine, a purpurin, and a pheophorbide. Claims 3, and 10-15 all depend on claim 1. Applicants believe the amendment obviates the rejection.

### **35 U.S.C. §102**

Claims 1-4 and 6-25 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent Application Publication No. US 2003/0060718 (hereinafter "Alam"). Without acquiescing in the rejection and for the sole purpose of expediting prosecution Applicants have amended claim 1 to recite "administering a treatment composition comprising a photodynamic agent suitable for photodynamic therapy, wherein the photodynamic agent is chosen from a hematoporphyrin, an aminolevulinic

acid, a porphyrin, a mercocyanine, a porphycene, porfimer sodium, a verteporfin, Photofrin II™, PH-10™, a chlorin, a zinc phthalocyanine, a purpurin, and a pheophorbide.” Claims 2-3 and 6-25 depend on claim 1. Applicants believe that Alam does not disclose the claimed method as amended herein, and thus submit that the amendment obviates this rejection.

Claims 1-3 and 6-11 stand rejected 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent 6,440,950 to Zeimer (hereinafter “Zeimer”). Without acquiescing in the rejection and for the sole purpose of expediting prosecution Applicants have amended claim 1 as set forth above. Applicants submit that Zeimer does not teach or suggest a photodynamic agent chosen from a hematoporphyrin, an aminolevulinic acid, a porphyrin, a mercocyanine, a porphycene, porfimer sodium, a verteporfin, Photofrin II™, PH-10™, a chlorin, a zinc phthalocyanine, a purpurin, and a pheophorbide. Applicants therefore believe that this amendment obviates this rejection as well.

### **35 U.S.C. §103**

Claim 5 stands rejected under 35 U.S.C. §103 as being unpatentable over Alam as applied to claims 1-4 above and further in view of U.S. Patent No. 5,707,986 to Miller (hereinafter “Miller”). The Office admits that Alam does not teach administration of the ICG in a bolus followed by a saline flush, but alleges that Miller discloses ICG as a dye in angiographic observation in an eye wherein the administration is by intravenous injection of a bolus followed by a saline flush. Claim 5 depends on claim 1. The cited references do not teach all of the claim limitations, as amended herein. Specifically, neither Alam nor Miller, teach or suggest administering a photodynamic agent chosen from a hematoporphyrin, an aminolevulinic acid, a porphyrin, a mercocyanine, a porphycene, porfimer sodium, a verteporfin, Photofrin II™, PH-10™, a chlorin, a zinc phthalocyanine, a purpurin, and a pheophorbide, as claim 1 now recites. Accordingly, neither reference teaches or suggests all of the claim limitations and thus their combination cannot render claim 5 obvious. Applicants respectfully request withdrawal of the rejection.

## Conclusion

The amendments to the claims, as set forth herein, have been offered to advance this application to issue. None of the amendments made herein should be construed as an admission that the subject matter of the claims, as originally filed, is anticipated by or made obvious in light of any art of record whether considered singularly or in combination. Applicant respectfully reserves the right to pursue the originally filed claims in another co-pending application without being prejudiced by any amendments, including cancellation of claims, made herein.

Applicant believes all claims are in allowable condition. A notice of allowance for this application is earnestly solicited. If the Examiner has any questions regarding this amendment, the Examiner is invited to call Applicant's attorney at the number listed below. The Examiner is hereby authorized to charge any fees or credit any balances under 37 CFR §§1.16 and 1.17 to Deposit Account No. 02-3038.

Respectfully submitted

E Stewart Mittler Date: 4/14/05  
E. Stewart Mittler, Esq., Reg. No. 50,316  
KUDIRKA & JOBSE, LLP  
Customer Number 021127  
Tel: (617) 367-4600 Fax: (617) 367-4656